Calendar No. 1208

98TH CONGRESS, 2d Session | SENATE | REPORT 98–625

POSTPONING UNTIL JANUARY 1, 1986, CERTAIN REQUIREMENTS UNDER THE COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM AND TO EXTEND UNTIL JANUARY 1, 1986, NOTIFICATION REQUIREMENTS UNDER THE RESIDENTIAL CONSERVATION SERVICE PROGRAM

SEPTEMBER 19 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 5946]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 5946) to reform the Residential Conservation Service and to repeal the Commercial and Apartment Conservation Service having considered the same, reports favorably thereon with an amendment to the text in the nature of a substitute and recommends that the act as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof:

SECTION 1. (a) During the period beginning on the date of the enactment of this Act and ending on January 1, 1986, the Secretary of Energy may not approve any plan submitted under section 721(a) of the National Energy Conservation Policy Act (relating to energy conservation for commercial buildings and multifamily dwellings), and no public utility may be required to offer an energy audit to an eligible customer of such utility under section 731(a)(1) of such Act, except pursuant to a plan approved by the Secretary prior to the date of the enactment of this Act.

(b) Sections 215(a), 215(d) and 217(a)(1) of the National Energy Conservation Policy Act (relating to utility programs and home heating supplies programs) are amended by striking out "January 1, 1985," each place it appears and inserting in lieu thereof "January 1, 1986,".

PURPOSE

As ordered reported, H.R. 5946 amends the National Energy Conservation Policy Act, Public Law 95–619, to extend until January 1, 1986, notification requirements under the Residential Conservation Service program and to postpone until January 1, 1986, certain statutory requirements under the Commercial and Apartment Conservation Service program.

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Background and Need

RCS and CACS programs

The Federal Residential Conservation Service [RCS] was mandated by the 1978 National Energy Conservation Policy Act [NECPA] (Public Law 95–619) and amended by the 1980 Energy Security Act (Public Law 96–294). The program is intended to promote the conservation of energy in residential households by providing information and assistance. Because of their expertise in energy issues and because of their frequent contact with residential customers, utilities were selected as the institutions to provide the required information and assistance. In practice, the utilities are to gather and provide information through a residential inspection, known as an "energy audit." Under the law, as amended, utilities must offer to:

Provide information to each customer on the potential energy savings and estimated costs of individual conservation and renewable resource investments;

Provide information to customers on energy-saving practices;

Provide lists of contractors and lenders and help in arranging for contractors and financing;

Inspect completed conservation measures in certain instances; and

Provide conciliation services for customer complaints.

For the purposes of the program, utilities are defined as any investor-owned or municipal utility that sells at least 10 billion cubic feet of natural gas or 750 million kilowatt hours of electricity during a given calendar year. Residential customers are defined as those in residences of one to four dwelling units or residents of individually heated or cooled apartments.

The statute directs the Department of Energy to promulgate regulations for the implementation of the RCS program. Each State is directed to prepare, in cooperation with its utilities, a State plan for submission to the Department of Energy. If a State does not submit a plan or does not receive approval of its submitted plan, then the Department of Energy is required to implement a Federal standby plan. The Federal standby plan is required to be developed by the Department of Energy. At this time, six States are operating under the Federal standby plan and the remaining States have implemented their own RCS plans.

The Energy Security Act, passed by Congress in 1980, made the following changes in the RCS program:

Removed the prohibition on direct utility financing and allowed utilities to subcontract for installation of conservation measures;

Placed a $15 per audit ceiling on charges to residential customers; and

Reduced the minimum warranty requirements from three years to one year.

The 1980 statute also provides that after State plan approval, affected utilities must send program announcements to their customers informing them of the RCS program every 2 years until January 1, 1985. There is no termination date for the program itself, however.

A number of concerns have been expressed about the cost-effectiveness of the RCS program. For example, in a January 19, 1984, evaluation report of the RCS program, the Department of Energy identified some of the major strengths and weaknesses of the program. Among the report's conclusions on the program's shortcomings was the statement:

> It is now believed that the present on-site audits may not be an effective mechanism for reaching less wealthy and/or rental households. Other techniques, including working through community groups, greater focus on quick payback items or shared savings programs, may be more effective in various settings.

In the overall conclusions, the DOE report adds:

> . . . participation to date has been less extensive or demographically broad than desired, and audit costs, now averaging $120, include certain elements that are recognized as neither necessary nor cost-effective.

In addition, an August 1983 study by the Congressional Research Service [CRS] concludes that residential conservation could supply the equivalent of 131,000 megawatts by 1998 at a cost below that of building new powerplants. A follow-up December 1983 CRS study concluded that the potential for cost-effective energy savings appears to be about 22 percent per household, well above the 8-percent average annual savings experienced by participants in the RCS program.

The 1980 Energy Security Act also initiated the development of the Commercial and Apartment Conservation Service [CACS] which expands the program to multifamily buildings and small commercial buildings.

The CACS program is not yet in operation. As in the RCS program, States must submit plans to the Department of Energy for approval. The deadline was June 4, 1984. By law, the Department of Energy must approve or disapprove State plans within 90 days of their submission. At this time, 32 States have submitted CACS plans to DOE for approval. Seven States have received extensions of the submission deadline, seven others have indicated that they will not submit a plan, and six States have not responded. One State, Michigan, has an approved CACS plan.

HOUSE LEGISLATION

H.R. 5946 would make several major modifications to existing law, including extending the notification requirement for the availability of RCS audits to January 1, 1990, and repealing the CACS program. The bill would also authorize each State or individual utility to develop an alternative energy conservation plan that would replace the current RCS program within a particular State.

The bill provides that such an alternative plan would not be required to contain particular types of programs; however, contemplated options are: low-interest financing; rebates for energy efficient equipment; promotion of load management devices or direct payments of the cost of certain conservation measures. Any alternative plan would have the following requirements: basic energy conservation information must be distributed to eligible customers; the programs must be designed to result in a 5-percent annual participation rate and a 10-percent annual energy savings among participating residents, and the plan must be designed to reach low- or moderate-income residents.

NEED FOR LEGISLATION

H.R. 5946, which passed the House on July 30, 1984, provides for substantial changes in the implementation of the RCS program, and repeals the CACS program. Due to the lateness in this Congress of Senate receipt of the House-passed measure, the committee did not have adequate time to give full consideration to the RCS reforms and the CACS repeal contained in the House-passed bill. However, without legislation, the residential notification requirements of the RCS program will terminate January 1, 1985. Also, the Department of Energy will proceed with its implementation of the CACS program before the committee can evaluate whether implementation under current law will lead to any of the problems experienced in the RCS program. The committee reported the amendment discussed in this report in order to provide sufficient time to conduct oversight of these programs, so as to render an informed judgment on the issues raised by the House passed bill.

Legislative History

H.R. 5946 was introduced by Mr. Ralph M. Hall (D-TX) on June 27, 1984. As introduced, it contained the major elements of the bill (H.R. 5628) reported by the Subcommittee on Energy Conservation and Power. H.R. 5946 was reported with amendments by the House Energy and Commerce Committee on June 28, 1984. The bill passed the House on July 30, 1984, and subsequently was referred to the Senate Energy and Natural Resources Committee on August 1, 1984. No hearings were held on the measure in the Senate.

Committee Recommendations and Tabulation of Votes

The committee, in an open business session on September 12, 1984, by a unanimous vote of a quorum present, recommended that the Senate pass H.R. 5946 if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas and 0 nays, as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski [1]	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee [1]	
Mr. Heinz [1]	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum [1]	
Mr. Matsunaga [1]	
Mr. Melcher	
Mr. Tsongas [1]	
Mr. Bradley	
Mr. Levin	

[1] Indicates voted by proxy.

Committee Amendment

The committee adopted an amendment in the nature of a substitute which will defer implementation and start-up costs of the CACS program and extend the notification requirements of the RCS program until January 1, 1986. This will give the committee time to thoroughly review both programs and make responsible recommendations to the Senate during the 99th Congress.

The committee amendment defers implementation of the CACS program by directing that the Secretary of Energy may not approve any CACS plan submitted under section 721(a) of the National Energy Conservation Policy Act and no utility may be required to offer an energy audit under section 731(a)(1) of the act, except under a plan approved by the Secretary prior to enactment of this act. The committee understands that one State, Michigan, has already received approval from the Secretary of Energy of its CACS plan and therefore, that State's implementation of the CACS program would not be affected by this legislation.

It is also the committee's judgement that there has been insufficient time to allow for proper consideration of the House legislation; therefore, the committee recommends against Senate consideration, at this time, of further amendments to H.R. 5946.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 14, 1984.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 5946, the Conservation Service Reform Act of 1984, as ordered reported by the Senate Committee on Energy and Natural Resources, September 12, 1984. Enactment of this bill is estimated to have no net effect on Federal outlays over the fiscal years 1985 through 1989, and would result in no additional costs to State and local governments.

This bill postpones the Department of Energy's [DOE] approval of State conservation plans for commercial apartment buildings until January 1, 1986. Under current law, the DOE is expected to spend about $0,000 in fiscal year 1985 to complete its review and approval of these plans. Enactment of this bill would shift these expenditures from fiscal year 1985 to fiscal year 1986. The bill also delays the deadline for mandatory energy audits by utility companies. This provision would have no effect on Federal outlays.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James Blum,
(For Rudolph G. Penner).

Regulatory Impact Evaluation

The bill would not impose additional Government-established standards or significant economic responsibilities on private individuals and businesses. In fact, the bill would postpone implementation of certain regulations under the Commercial and Apartment Conservation Service.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 5946.

Executive Communications

There was no legislative reports or communications received by the committee from the administration relating to H.R. 5946.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 5946, as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

* * * * * * *

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

SEC. 210. DEFINITIONS.

As used in this title—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "load management technique" means any technique to reduce the maximum kilowatt demand on an electric utility, including ripple or radio control mechanisms, or other types of interruptible electric service, energy storage devices, and load limiting devices.

(3) The term "natural gas" means natural gas as defined in the Natural Gas Act.

(4) The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

(5) The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(6) The term "nonregulated utility" means a public utility which is not a regulated utility.

(7) The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale of electric energy or natural gas.

(8) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(9) The term "residential building" means any building used for residential occupancy which—

(A) is not a new building to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act apply, and

(B) contains at least one but not more than four dwelling units and has a system for heating or cooling, or both, except that, after January 1, 1982, such term shall also include any building which contains more than four dweling units unless such building contains a heating or cooling system, or both, which is a central system.

(10) The term "residential customer" means any person to whom—

(A) a public utility sells natural gas or electric energy, or

(B) a home heating supplier supplies or sells home heating fuel (including No. 2 heating oil, kerosene, butane, and propane),

for consumption by such customer in a residential building.

(11) The term "residential energy conservation measure" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications including—

(i) replacement burners, furnaces or boilers or any combination thereof which, as determined by the Secretary, substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, and floor insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed window and door materials;

(G) devices associated with load management techniques;

(H) devices to utilize solar energy or windpower for any residential energy conservation purpose, including heating of water, space heating or cooling; and

(I) such other measures as the Secretary by rule identifies for purposes of this part.

(12) The term "residential energy conservation plan" means a plan approved by the Secretary pursuant to section 212.

(13) The term "State" means a State, the District of Columbia, and Puerto Rico.

(14) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy or natural gas by any public utility (other than by such State agency); except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(15) The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(16) The term "suggested measures" means, with respect to a particular residential building, the residential energy conservation measures which the Secretary, in the rules prescribed pursuant to section 212, determines to be appropriate for the location and the category of residential buildings which includes such building. In determining which of the residential energy conservation measures shall be suggested measures for a location and category of residential building, the Secretary shall consider the cost of the inspection offered under section 215(b)(1)(A) and its effect on the willingness of residential customers to participate in the utility program.

(17) The term "utility program" means a program meeting the requirements of section 215.

(18) The term "Governor" means the Governor or chief executive officer of a State or his designee.

(19) The term "home heating supplier program" means a program meeting the requirements of section 217.

(20) The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to a residential customer for consumption in a residential building.

SEC. 211. COVERAGE.

(a) IN GENERAL.—This part shall apply in any calendar year to a public utility only if during the second preceding calendar year either—

(1) sales of natural gas by such public utility for purposes other than resale exceeded 10 billion cubic feet, or

(2) sales of electric energy by such public utility for purposes other than resale exceeded 750 million kilowatt-hours.

(b) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each public utility to which this part applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each public utility on the list for which such State regulatory authority has ratemaking authority.

SEC. 212. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

(a) PROMULGATION OF RULES BY SECRETARY.—The Secretary shall, not later than 45 days after enactment of this Act, publish an advanced notice of proposed rulemaking with respect to rules on the content and implementation of residential energy conservation plans which meet the requirements of sections 213 and 214. Not later than 60 days after the date of publication of the advanced notice of proposed rulemaking, and after consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce (acting through the National Bureau of Standards), the Federal Trade Commission, the Consumer Product Safety Commission, and the heads of such other agencies as he deems appropriate, the Secretary shall publish a proposed rule on content and implementation of such plans. After publication of such proposed rule, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral and written comments on matters relating to such proposed rule. A rule prescribing the content and implementation of residential energy conservation plans shall be published not earlier than 45 days after publication of the proposed rule.

(b) CONTENT OF SECRETARY'S RULES.—The rules promulgated under subsection (a)—

(1) shall identify the suggested measures for residential buildings, by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary may deem appropriate;

(2) shall include—

(A) standards which the Secretary determines necessary for general safety and effectiveness of any residential energy conservation measure;

(B) standards which the Secretary determines necessary for installation of any residential energy conservation measure;

(C) standards for the procedures concerning fair and reasonable prices and rates of interest required under section 213(a)(4);

(D) standards, developed in consultation with the Federal Trade Commission, concerning unfair, deceptive, or anticompetitive act or practices, for the measures required under section 213(b);

(E) standards which (i) require the lists referred to in section 213(a)(2) (concerning lists of suppliers and contractors) and 213(a)(3) (concerning lists of lending institutions) to be prepared in a fair, open, and nondiscriminatory manner and (ii) provide for the removal, in appropriate cases, of suppliers, contractors, or lending institutions from such lists; and

(F) standards which assure that any person who alleges any injury resulting from a violation of the requirements of the standards under subparagraph (E) shall be entitled to redress under procedures established by the Governor (or the Secretary in any case in which section 218, relating to Federal standby authority applies);

(3) shall include provisions requiring that—

(A) the manufacturer of any residential energy conservation measure offered under a utility program shall, in connection with such measure, warrant in writing that the residential customer for whom the measure is installed, the installation contractor who installs the measure, and the supplier of the measure shall (for those measures found within one year from the date of installation to be defective due to materials, manufacture, or design), at a minimum, be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials;

(B) the supplier of any residential energy conservation measure offered under a utility program shall, in connection with such measure, provide, at a minimum, to any person who purchases the measure from such supplier a warranty equivalent to that required under subparagraph (A); and

(C) the contractor for the installation of any residential energy conservation measure offered under a utility program shall, in connection with such measure, warrant in writing that, at a minimum, any defect in materials, manufacture, design or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time; and

(4) may include such other requirements as the Secretary may determine to be necessary to carry out this part.

(c) PROCEDURE FOR SUBMISSION AND APPROVAL OF STATE RESIDENTIAL ENERGY CONSERVATION PLANS.—(1)(A) Not later than 180 days after promulgation of rules under subsection (a), the Governor of each State or any State agency specifically authorized to do so under State law, may submit to the Secretary a proposed residential energy conservation plan which meets the requirements of the rules promulgated under subsection (a). Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under subsection (a), to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in paragraph (2). The Secretary may, upon request of the Governor or State agency for nonregulated utility, extend, for good cause shown, the time period for submission of a plan.

(B) Each such plan shall be reviewed and approved or disapproved by the Secretary not later than 90 days after submission. If the Secretary disapproves a plan, the Governor or State agency or nonregulated utility may submit a new or amended plan not later than 60 days after the date of such disapproval, or such longer period as the Secretary may, for good cause, allow. The Secretary shall review and approve or disapprove any such new or amended plan not later than 90 days after submission.

(C) After approval of a plan, a Governor or State agency or nonregulated utility may submit an amended plan and such plan shall be approved or disapproved in the same manner as the original plan.

(2) Any plan submitted by a Governor or State agency under paragraph (1) may, in the discretion of the Governor, if he notifies the Secretary within 30 days after promulgation of rules under subsection (a), apply to nonregulated utilities providing utility service in the State in the same manner as to regulated utilities. In any such case references elsewhere in this part to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority) shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this part to nonregulated utilities shall not apply. For purposes of this paragraph, the term "nonregulated utility" shall not include any public utility which is a Federal agency.

(3) A plan applicable to home heating suppliers may be submitted by the Governor in his discretion.

(4) In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

SEC. 213. REQUIREMENTS FOR STATE RESIDENTIAL ENERGY CONSERVATION PLANS FOR REGULATED UTILITIES.

(a) GENERAL REQUIREMENTS.—No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan—

(1) requires each regulated utility to implement a utility program which meets the requirements of section 215 (except such requirements of section 215 as do not apply by reason of section

216(f)) and contains adequate State enforcement procedures in connection with such implementation;

(2) provides a procedure for permitting any supplier or contractor—

(A) who sells or installs residential energy conservation measures in the area served by such utility, and

(B) who meets such minimum requirements as may be contained in rules promulgated by the Secretary under section 212(b)(2)(E) and who agrees to comply with the provisions promulgated under section 212(b)(3)

to be included on a list made public by such utility as provided under section 215(a)(3);

(3) provides a procedure for permitting any bank, savings and loan association, credit union, or other public or private lending institution which—

(A) offers loans for the purchase and installation of residential energy conservation measures in the areas served by such utility and

(B) which meets such minimum requirements as may be promulgated by the Secretary under section 212(b)(2)(E) to be included on a list made public by such utility as provided under section 215(a)(3), and provides that such list shall include a notation informing customers that financial assistance under the Solar Energy and Energy Conservation Bank Act may be available from such lending institutions;

(4) provides adequate procedures to assure that each regulated utility will charge fair and reasonable prices and rates of interest to its residential customers under such utility program in connection with the purchase and installation of residential energy conservation measures;

(5) provides procedures for resolving complaints against persons who sell or install residential energy conservation measures under such program;

(6) provides procedures for insuring that effective coordination exists among various local, State, and Federal energy conservation programs within and affecting such State, including any energy extension service program administered by the Secretary of Energy;

(7) is adopted after notice and public hearings;

(8) meets such other requirements as may be contained in the rules promulgated under section 212; and

(9) requires any utility undertaking a program involving the supply or installation of any residential energy conservation measure as permitted under section 216(c) or providing financing for the purchase or installation of any such measure to notify the Secretary of Energy when such program becomes effective.

(b) REQUIREMENTS CONCERNING UNFAIR, DECEPTIVE, OR ANTICOMPETITIVE ACT OR PRACTICES.—

(1) No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains adequate measures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce

which relate to the implementation of utility programs within such State.

(2) The measures under paragraph (1) shall include—

(A) provisions to assure that, in carrying out procedures under section 215(b)(1) (or the corresponding procedures in section 217) the regulated utility will not unfairly discriminate among—

(i) residential customers,

(ii) suppliers and contractors of such measures, or

(iii) lending institutions in the utility's service area which offer loans for the purchase and installation of residential energy conservation measures, and

will not unfairly discriminate among measures which are purchased from or installed by, any person under such program;

(B) provisions to assure that in the case of a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by a utility, such utility will not inspect such furnace, or make, install, or inspect any furnace efficiency modification referred to in section 210(11)(B), unless the residential customer requests (in writing) such inspection, installation, or modification;

(C) provisions to assure that, whenever any public utility undertakes to finance its lending program for residential energy conservation measures through financial institutions, the utility shall (to the extent such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers) seek funds for such financing from financial institutions located throughout the area covered by the lending program; and

(D) provisions to assure that, in the case of any residential energy conservation plan which permits or requires any such utility to supply or install any residential energy conservation measure, the procedures under which any such utility undertakes such supply or installation will be consistent with the requirements of section 216(c).

(c) REDRESS.—No residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress under such procedures as may be established by the Governor or State agency.

SEC. 214. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND HOME HEATING SUPPLIERS.

(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—No residential energy conservation plan proposed by a nonregulated utility shall be approved by the Secretary unless such plan meets the same requirements as provided under section 213 for regulated utilities and in addition contains procedures pursuant to which such utility will submit a written report to the Secretary not later than one year after approval of such plan, and biennially thereafter, regarding the implementation of a utility program under section 215 and containing such information as may be required by the Secretary in the rules

promulgated under section 212. In applying the requirements of section 213 in the case of a plan for nonregulated utilities under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility.

(b) REQUIREMENTS FOR PLANS FOR HOME HEATING SUPPLIERS.—No residential energy conservation plan proposed for home heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under section 213(a) (other than paragraphs (1) and (8) thereof) and section 213 (b) and (c) and in addition—

(1) meets the requirements of section 217 and contains adequate enforcement procedures with respect to such requirements;

(2) meets such requirements applicable to home heating suppliers as may be contained in the rules promulgated under section 212; and

(3) takes into account the resources of small home heating suppliers.

In applying the requirements of section 213 in the case of a plan for home heating suppliers under this section, any reference to a regulated utility shall be treated as a reference to the home heating supplier and any reference to a utility program shall be treated as a reference to a home heating supplier program.

SEC. 215. UTILITY PROGRAMS.

(a) INFORMATION REQUIREMENTS.—Each utility program shall include procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before [January 1, 1985,] *January 1, 1986*, each of its residential customers who owns or occupies a residential building, or—

(1) the suggested measures for the category of buildings which includes such residential building;

(2) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category;

(3) the availability of the arrangements described in subsection (b) and the lists referred to in section 213(a)(2) and (3); and

(4) suggestions of energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in energy use patterns and modifications of household activities which can be employed by the residential customers to save energy and which do not require the installation of energy conservation measures (including the savings in energy costs that are likely to result from the adoption of such suggestions).

(b) PROJECT MANAGER REQUIREMENTS.—Each utility program shall include—

(1) procedures whereby the public utility, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, will, for each residential customer who owns or occupies a residential building, offer to—

(A) inspect the residential building (either directly or through one or more inspectors under contract) to determine and inform the residential customer of the estimated cost of

purchasing and installing the suggested measures and the savings in energy costs that are likely to result from the installation of such measures (a report of which inspection shall be kept on file for not less than 5 years which shall be available to any subsequent owner without charge), except that a utility shall be required to make only one inspection of a residence unless a new owner requests a subsequent inspection;

(B) arrange to have the suggested measures installed (except for furnace efficiency modifications with respect to which the inspection prohibition of section 213(b)(2)(B) applies, unles the customer requests in writing arrangements for such modifications in writing); and

(C) arrange for a lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(2) procedures whereby the public utility provides to each of its residential customers the lists as described in section 213(a)(2) and (3).

(c) REQUIREMENTS CONCERNING ACCOUNTING AND PAYMENT OF COSTS.—(1) Each utility program shall include—

(A) procedures to assure that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 219(d)) are accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility;

(B) procedures to assure that all amounts expended by a utility for providing information under subsection (a) are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service;

(C) procedures to permit general administrative costs of carrying out a utility program and the amounts expended by a public utility to carry out subsection (b) to be, recovered in the manner specified by the State regulatory authority which has ratemaking authority over such utility (or in the case of a nonregulated utility in the manner specified by such nonregulated utility); except that the amount that may be recovered directly from a residential customer for whom the activities described in subsection (b) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less; in determining the amount to be recovered directly from customers as provided under this subparagraph, the State regulatory authority (in the case of a regulated utility) or the utility (in the case of a nonregulated utility) shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(2)(A) Any portion of the costs of carrying out any activity as a part of a utility program under this section which are charged to the residential customer for whom such activity is performed and included on a billing for utility service submitted by the utility to such residential customer shall be stated separately on such billing from the cost of providing utility service.

(B) For purposes of this subsection, the term "ratepayer" means any person, State agency, or Federal agency who purchases electric energy or natural gas from a utility.

(d) REQUIREMENTS RESPECTING NEW CUSTOMERS.—In the case of any person who becomes a residential customer of a utility carrying out a utility program under this section after January 1, 1980 (or the date six months after approval of the applicable plan, if later), and before [January 1, 1985,] *January 1, 1986*, not later than 60 days after such person becomes a residential customer of such utility, such utility shall inform such person of the items listed in subsection (a), the offer required under subsection (b)(1)(A), and shall offer such person the opportunity to enter into arrangements referred to in subparagraphs (B) and (C) of subsection (b)(1).

(e) TERMINATION OF SERVICE.—No utility implementing any program under this section may terminate utility service to any customer by reason of any default of such customer with respect to payments due for energy conservation measures installed pursuant to such program.

(f) LOANS.—In the case of a loan which is arranged by a public utility under subsection (b)(1)(C), the utility, at the request of the person making such loan, shall permit repayment of the loan as part of the periodic utility bill. The utility may recover from the person making such loan the cost incurred by the utility in carrying out such manner of repayment.

(g) EXEMPT ACTIVITIES.—For purposes of this section, the term "utility program" includes activities which are subject to this section by reason of section 216(f).

SEC. 216. SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.

(a) PROHIBITION ON SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.—Except as provided in this section, no public utility may supply or install a residential energy conservation measure for any residential customer.

(b) EXEMPTION FROM PROHIBITION ON INSTALLATION.—The prohibition contained in subsection (a) shall not apply to the energy conservation measures referred to in section 210(11)(B) or 210(11)(C), or devices associated with load management techniques for the type of energy sold by the utility.

(c) EXEMPTION FROM PROHIBITION ON SUPPLY AND INSTALLATION.—(1) The prohibition contained in subsection (a) shall not apply to any residential energy conservation measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply or installation and each such supplier or contractor—

(A) is on the list of suppliers and contractors referred to in section 213(a)(2);

(B) is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

(C) if selected by the utility, is selected in a manner consistent with paragraph (2).

(2) As provided under the provisions described in section 213(b)(2)(D), activities of a public utility under paragraph (1)—

(A) may not involve unfair methods of competition;

(B) may not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of residential energy conservation measures;

(C) shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of residential energy conservation measures, that any financing by the utility of such measures shall be available to finance supply or installation by an contractor on the lists referred to in section 213(a)(2) or to finance the purchase of such measures to be installed by the customer;

(D) to the extent practicable and consistent with subparagraphs (A), (B), and (C), shall be undertaken in a manner which minimizes the cost of residential energy conservation measures to such customers; and

(E) shall include making available upon request a current estimate of the average price of supply and installation of residential energy conservation measures subject to the contracts entered into by the public utility under paragraph (1).

(d) GENERAL EXEMPTIONS.—The prohibitions contained in subsection (a) shall not apply to—

(1) the supply, installation, or financing of those specific residential energy conservation measures which the Secretary determines were being installed or financed by a public utility on the date of enactment of this Act;

(2) supply, installation, or financing activities which the Secretary determines were broadly advertised or for which substantial preparations were completed on or before the date of enactment of this Act; or

(3) supply, installation, or financing activities by a public utility with respect to energy conservation measures where a law or regulation in effect on or before the date of enactment of this Act either requires, or explicitly permits, the public utility to carry out such activities.

(e) WAIVER.—The Secretary may, upon petition of a public utility, supported in the case of a regulated utility by a Governor, waive in whole or in part the prohibitions contained in subsection (a) with respect to the utility if such utility demonstrates to the satisfaction of the Secretary that, in carrying out prohibited activities under subsection (a), fair and reasonable prices and rates of interest would be charged and the Secretary finds, after consultation with the Federal Trade Commission, that such activities would not be inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

(f) APPLICABILITY OF SECTION 215.—Any public utility carrying out activities permitted under subsection (b) or (c) or subsection (d)(2) or (e) of this section shall be subject to all the requirements of section 215 with respect to such activities. A public utility which is carrying out activities permitted pursuant to subsection (d)(1) shall, within such reasonable period as may be prescribed by the Secretary, be sub-

ject to all such requirements of section 215 with respect to such activities. A public utility carrying out activities permitted pursuant to the exemption contained in subsection (d)(3) shall not be subject to the requirements of section 215 with respect to such activities.

(g) AUTHORITY TO MONITOR AND TERMINATE SUPPLY, INSTALLATION, OR FINANCING BY UTILITIES.—(1) The Secretary, in consultation with the Federal Trade Commission, shall monitor financing, supply, and installation activities of public utilities in connection with residential energy conservation measures and shall report annually to Congress on such activities. Each such report shall contain the comments of the Federal Trade Commission.

(2) After the date of the enactment of this subsection, no public utility may make any loan or finance the purchase or installation of, or supply or install, any residential energy conservation measure if the Secretary has determined, after notice and opportunity for public hearing, and after consultation with the Federal Trade Commission, that—

(A) such loans are being made, or supply or installations carried out, by such utility at unreasonable rates or on unreasonable terms and conditions, or

(B) such loans made, or supply or installations carried out, by such utility have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices or are being carried out in a manner which does not comply with subsection (c).

(h) ENFORCEMENT.—For purposes of section 219(d), any violation of a prohibition contained in this section shall be treated as a violation of a plan promulgated under section 219(a).

(i) TAX TREATMENT.—The value of any subsidy provided by a utility to any residential customer for the purchase and installation of residential energy conservation measures shall not be included in the gross income of such customer for purposes of the Internal Revenue Code of 1954, and such customer shall not receive any increase in basis under the Internal Revenue Code of 1954 which is attributable to any such subsidy.

SEC. 217. HOME HEATING SUPPLIER PROGRAMS.

(a) REQUIREMENTS.—Each home heating supplier program shall include—

(1) procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before [January 1, 1985,] *January 1, 1986*, each residential customer of each participating home heating supplier who owns or occupies a residential building of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection; and

(2) procedures whereby a participating home heating supplier, no later than January 1, 1980 (or the later date referred to in paragraph (1)) will offer each such residential customer the opportunity to enter into arrangements with the home heating supplier under which such supplier, directly or through one or more inspectors under contract, will—

(A) inspect the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing, and the savings in energy costs that are likely to result from installing, suggested measures;

(B) inform each interested customer of the lists referred to in section 213(a)(2) and (3);

(C) install or have suggested measures installed;

(D) make, or arrange for another lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(E) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (d) (over a period of not less than three years unless the customer elects a shorter payment period) as a part of his periodic bill except:

(i) failure to make any payment of such principal or interest shall not be grounds for the termination of fuel deliveries to the residential customer; and

(ii) a lump-sum payment of outstanding principal and interest may be required upon default (as determined under otherwise applicable law) in payment by the residential customer.

No penalty shall be imposed by the lender, under procedures described in paragraph (2), for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(b) NOTICE; WAIVER.—A home heating supplier who wishes to participate in the program established pursuant to this section may so notify the Governor. The Governor may waive, for any home heating supplier, any requirement of this section, upon demonstration to his satisfaction that the resources of such supplier do not enable him to comply with such requirement.

SEC. 218. TEMPORARY PROGRAMS.

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—A Governor of any State, on behalf of one or more utilities, or any public utility (supported by the Governor in the case of a regulated utility) may, no later than 180 days after the promulgation of rules pursuant to section 212, apply for a temporary exemption for one or more utilities from one or more of the requirements of section 215 and the prohibitions contained in section 216(a). Such temporary exemption may be granted, as determined by the Secretary, for a period not to exceed 3 years after the date of approval of such exemption.

(b) TIME LIMIT.—An application for an exemption under subsection (a) shall be approved or disapproved by the Secretary within 90 days of receipt of such application or such longer period as the Secretary may require in the case of any particular application.

(c) INFORMATION.—An application for an exemption under subsection (a) to establish a temporary program shall contain such information and meet such requirements as the Secretary shall prescribe by rule.

(d) REQUIREMENTS.—In order for an application for an exemption under subsection (a) to be granted, the Governor or the public utility shall demonstrate to the satisfaction of the Secretary that the temporary program will:

(1) contain adequate procedures to assure that each public utility, in connection with such program, will charge fair and reasonable prices and rates of interest to its residential customers in connection with the purchase and installation of residential energy conservation measures;

(2) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such program; and

(3) be likely to result in the installation of suggested measures in at least as many residential buildings as would have been installed had such utility submitted a program which met the requirements of section 215 and did not violate the prohibitions contained in section 216(a).

(e) FEDERAL STANDBY AUTHORITY.—The Secretary shall not exercise the Federal standby authority, pursuant to section 219(a) or (b) with respect to any public utility which is covered by a temporary exemption approved by the Secretary pursuant to this section. Upon termination of such temporary exemption, the Secretary shall exercise such authority unless, within such period as he deems reasonable after such termination, the State (or nonregulated utility as the case may be) has a plan applicable to such utility approved under section 212 and such plan is being adequately implemented (as determined by the Secretary).

SEC. 219. FEDERAL STANDBY AUTHORITY.

(a) STANDBY AUTHORITY FOR STATE REGULATED UTILITIES.—If a State does not have a plan approved under section 212(c) within 270 days after promulgation of rules under section 212(a), or within such additional period as the Secretary may allow pursuant to section 212 (c)(1), or if the Secretary determines, after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

(1) promulgate a plan which meets the requirements of section 213, and

(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 215 (except with respect to a utility for which such requirements are inapplicable by reason of section 216(f)).

For purposes of applying section 213(c) in the case of a plan promulgated by the Secretary under this section, the references to the Governor or State agency shall be treated as references to the Secretary.

(b) NONREGULATED UTILITIES.—If a nonregulated utility which is not covered by an approved State plan under section 212 does not have a plan approved under section 212(c) within 270 days after promulga-

tion of rules under section 212(a) or within such additional period as the Secretary may allow pursuant to section 212(c)(1), or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility to—

(1) promulgate a plan which meets the requirements of section 214 and which applies to the residential buildings which would have been covered had such a plan been so approved or implemented, and

(2) under such plan, by order, require the nonregulated utility to offer, not later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 215 (except in the case of a nonregulated utility for which such requirements are inapplicable by reason of section 216(f)).

(c) FAILURE TO COMPLY WITH ORDERS.—If the Secretary determines that any public utility to which an order has been issued pursuant to subsection (a) or (b) has failed to comply with such order, he may file a petition in the appropriate United States district court to enjoin such utility from violating such order.

(d) CIVIL PENALTY.—(1) Any public utility which violates any requirement of a plan promulgated under subsection (a) or (b) or which fails to comply with an order under subsection (a) or (b) within 90 days from the issuance of such order shall be subject to civil penalty of not more than $25,000 for each violation. Each day that such violation continues shall be considered a separate violation.

(2)(A) Notwithstanding section 402(d) of the Department of Energy Organization Act, a civil penalty under this subsection shall be assessed by an order of the Secretary.

(B) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after receipt of such notice to have the procedures of paragraph (4) (in lieu of those of paragraph (3)) apply with respect to such assessment.

(3)(A) Unless an election in writing is made within 30 calendar days after receipt of notice under paragraph (2) to have paragraph (4) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom such penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgement affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(4)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall assess such penalty, by order, not later than 60 calendar days after the date of receipt of notice under paragraph (2) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (3), of after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (4), the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final order or judgment imposing the civil penalty shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28, United States Code, or of section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this subsection applies (including any related collection action) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

SEC. 220. RELATIONSHIP TO OTHER LAWS.

(a) STATE AND LOCAL LAW IN GENERAL.—Nothing in this Part shall supersede any law or regulation of any State or political subdivision thereof, except to the extent that the Secretary, upon petition of a public utility and for good cause, determines that such law or regulation prohibits a public utility from taking any action required to be taken under this Part or that such law or regulation requires or permits any public utility to take any action prohibited under this Part.

(b) LAWS RELATING TO UNFAIR COMPETITION AND DECEPTIVE ACTS.—Nothing in this Part shall be construed as restricting the authority of any agency or instrumentality of the United States or of any State under any provision of law to prevent unfair methods of competition and unfair or deceptive acts or practices.

(c) TRUTH IN LENDING.—Nothing contained in section 104(4) of the Truth in Lending Act (15 U.S.C. 1603(4)) or the regulations issued pursuant thereto shall be deemed to exempt sales or credit extensions by public utilities under this Part.

(d) WARRANTIES.—With respect to section 212(b)(3) concerning warranties, all Federal and State laws otherwise applicable to such warranties shall apply, except to the extent inconsistent with such section.

(e) PUBLIC UTILITY HOLDING COMPANY ACT.—For purposes of section 11(b)(1) of the Public Utility Holding Company Act of 1935, any financing, supply, or installation of residential energy conservation measures under this part by a public utility company or utility holding company system subject to such Act shall be construed as an activity or business which is reasonably incidental or economically necessary or appropriate to the operations of the public utility company or utility holding company system.

SEC. 221. RULES.

The Secretary is authorized to promulgate such rules as he determines may be necessary to carry out this Part.

SEC. 222. PRODUCT STANDARDS.

The Secretary shall consult with the Secretary of Commerce, acting through the National Bureau of Standards, with regard to any product or material standard which is relied on in implementing this Part as a basis for judging the efficacy, energy efficiency, safety, or other attributes of energy conservation materials, products, or devices, and with the Federal Trade Commission for the purpose of insuring that such standards do not operate to deceive consumers or unreasonably restrict consumer or producer options, and that such standards (when applicable) are suitable as a basis for making truthful and reliable disclosures to consumers regarding performance and safety attributes of energy conservation products, materials, and devices.

SEC. 223. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated $5,000,000 to the Secretary for each of the first three fiscal years 1979, 1980, and 1981, to carry out his responsibilities under this Part.

SEC. 224. REPORT ON ENERGY CONSERVATION IN APARTMENT BUILDINGS.

(a) REPORT.—The Secretary shall, within six months after the date of enactment of this Act, prepare a report on the potential for energy conservation in apartment buildings.

(b) CONSIDERATION REQUIRED.—The report required under this section shall include a consideration of:

(1) structural and energy control measures which may result in energy conservation in apartment buildings;

(2) potential for energy conservation in apartment buildings which could be achieved by the application of a utility program (such as provided in this part) to apartment buildings;

(3) the costs of achieving energy conservation in apartment buildings, and the need for Federal financial assistance to achieve energy savings; and

(4) recommendations for appropriate legislation.

(c) DEFINITION.—For purposes of this section, the term "apartment building" means a building used for residential occupation which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which contains more than four dwelling units.

SEC. 225. FEDERAL TRADE COMMISSION STUDY AND REPORT.

(a) STUDY.—(1) Before January 1, 1982, the Federal Trade Commission shall complete a study and submit a report to Congress and the President on the activities of public utilities and home heating suppliers under this part.

(2) The study shall include a review of the making, or arranging, of loans and the installation, or arranging for installation, of any residential energy conservation measure by public utilities and home heating suppliers.

(3) Such study may contain legislative recommendations respecting lending and installation activities for any residential energy conservation measure by public utilities and home heating suppliers and may contain recommendations concerning whether public utilities or home heating suppliers should be permitted by State or Federal law to continue to carry out such activities.

(b) CONSIDERATIONS REQUIRED.—In conducting the study under this part, the Commission shall consider the effect of public utility and home heating supplier activities under this part on—

(1) competition among utilities, home heating suppliers, contractors, and lenders in a utility's service area;

(2) the availability of supplies of each residential energy conservation measure and the price of purchasing and installing each such measure;

(3) the increase in the number of residential buildings in which are installed, or likely to be installed any such measure; and

(4) any other factors the Commission deems appropriate.

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TITLE VII—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTI-FAMILY DWELLINGS

PART 1—GENERAL PROVISIONS

SEC. 710. DEFINITIONS.

(a) APPLICABILITY OF TITLE II DEFINITIONS.—The definitions in section 210 are applicable to this title, except as otherwise provided in this section.

(b) ADDITIONAL DEFINITIONS.—As used in this title—

(1) The term "building heating supplier" means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to eligible customers.

(2) The term "commercial building" means a building—

(A) which was completed on or before the date of enactment of this title,

(B) which is used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities or administration of a State or local government,

(C) which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities, and

(D) for which the average monthly use of energy for the calendar year 1980 is less than 4,000 kilowatt hours of electricity or 1,000 therms of natural gas or the Btu equivalent thereof of any other fuel;

except that such term does not include a Federal building as defined in section 521(2).

(3) The term "multifamily dwelling" means a building which is used for residential occupancy, was completed on or before the date of enactment of this title, and contains five or more dwelling units and a central heating or central cooling system.

(4) The term "energy efficient improvements" means any change in the operation or maintenance of a commercial building or multifamily dwelling, which change is designed primarily to reduce energy consumption in such building or dwelling and which has been identified by the Secretary in the rules promulgated under section 712(a) or approved by the Secretary for consideration in the energy audits offered to eligible customers under section 731, 732, or 741.

(5) The term "commercial energy conservation measure" means an installation or modification of an installation which is primarily designed to reduce the consumption of petroleum, natural gas, or electrical power in a multifamily dwelling or commercial building, including—

(A) caulking and weatherstripping;

(B) the insulation of the building or dwelling structure and systems within the building or dwelling;

(C) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflecting window and door systems, glazing, reductions in glass area, and other window and door system modifications;

(D) automatic energy control system;

(E) equipment, associated with automatic energy control systems, which is required to operate variable steam, hydraulic, or ventilating systems;

(F) furnace, or utility plant and distribution system, modifications, including—

(i) replacement burners, furnaces, boilers, or any combination thereof, which (as determined by the Secretary) substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(G) replacement or modification of a lighting system which increases the energy efficiency of the lighting system without increasing the overall illumination of the building

is necessary to conform to any applicable State or local building code or the increase is considered appropriate by the Secretary);

(H) energy recovery systems;

(I) cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, and which meet such fuel efficiency requirements as the Secretary may, by rule prescribe;

(J) a solar energy system, as defined in section 504(8) of the Solar Energy and Energy Conservation Bank Act; and

(K) such other measures as the Secretary identifies, by rule, for purposes of this title.

(6) The term "eligible customer" means—

(A) with respect to a public utility, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that public utility sells natural gas or electricity for use in such building or dwelling, or

(B) with respect to a building heating supplier, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such building or dwelling.

(7) The term "energy audit" means an on-site inspection of a commercial building or a multifamily dwelling which determines and informs the eligible customer of at least—

(A) the type, quantity, and rate of energy consumption of such building or dwelling;

(B) energy efficient improvements appropriate to such building or dwelling; and

(C) the need, if any, for the purchase and installation of commercial energy conservation measures in such building or dwelling. The Secretary, after consulting with appropriate State officials, may establish criteria for such audits on a regional basis to account for regional variations in energy use.

(8) The term "utility program" means a program meeting the requirements of section 731.

(9) The term "building heating supplier program" means a program meeting the requirements of section 732.

SEC. 711. COVERAGE.

This title shall apply to any public utility for which coverage is provided under section 211.

SEC. 712. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

(a) PROMULGATION OF RULES BY THE SECRETARY.—The Secretary shall, not later than 120 days after enactment of this title and after consultation with the Secretary of Housing and Urban Development and the heads of such other agencies as the Secretary deems appropriate, publish proposed rules on the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings which meet the requirements of this title. After publication of such proposed rules, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral

and written comments on such proposed rules. Rules prescribing the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings shall be published not earlier than forty-five days after publication of the proposed rules.

(b) ENERGY EFFICIENT IMPROVEMENTS OF DIFFERENT TYPES AND CATEGORIES.—The rules promulgated under subsection (a) may identify energy efficient improvements in different types of commercial buildings and multifamily dwellings by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary deems appropriate. Such improvements shall be considered in the energy audits offered to eligible customers under sections 731, 732, and 741.

(c) COORDINATION.—The rules promulgated under subsection (a) shall, to the extent practicable, coordinate the requirements of this title with the provisions of section 367(b)(1) of the Energy Policy and Conservation Act and with the utility program established under title II, part 1 of this Act. Such rules shall not have the effect of delaying the submission, approval, or implementation of residential energy conservation plans under title II, part 1 of this Act.

(d) OTHER RULES.—The Secretary may prescribe any other rules necessary to carry out the provisions of this title.

PART 2—ENERGY CONSERVATION PLANS

SEC. 721. PROCEDURES FOR SUBMISSION AND APPROVAL OF STATE ENERGY CONSERVATION PLANS FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS.

(a) SUBMISSION AND APPROVAL OF STATE PLANS.—Not later than 180 days after the promulgation of rules under section 712(a), the Governor of each State (or any State agency specifically authorized to do so under State law) may submit to the Secretary a proposed energy conservation plan for commercial buildings and multifamily dwellings which meets the requirements of the rules promulgated under section 712. Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under section 712, to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in subsection (b). The Secretary may, upon request of the Governor or State agency or nonregulated utility, extend for good cause shown, the time period for submission of a plan. Each plan submitted in accordance with this subsection shall be reviewed and approved or disapproved in accordance with the procedures of subparagraphs (B) and (C) of section 212(c)(1).

(b) NONREGULATED UTILITIES.—Any plan submitted by a Governor or State agency under subsection (a) may, in the discretion of the Governor if he notifies the Secretary within 30 days after promulgation of rules under section 712(a), apply to nonregulated utilities providing utility service in the State in the same manner as to regulated utilities. In any such case, reference elsewhere in this title to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority)

shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this title to nonregulated utilities shall not apply. For purposes of this subsection, the term "nonregulated utility" shall not include any public utility which is a Federal agency.

(c) PLAN FOR BUILDING HEATING SUPPLIERS.—A plan applicable to building heating suppliers may be submitted by the Governor in his discretion.

(d) TENNESSEE VALLEY AUTHORITY.—In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

SEC. 722. REQUIREMENTS FOR STATE PLANS FOR REGULATED UTILITIES.

No proposed energy conservation plan for commercial buildings and multifamily dwellings submitted for regulated utilities shall be approved by the Secretary unless such plan—

(1) requires each regulated utility to implement a program which meets the requirements of section 731 and such other requirements as may be contained in the rules promulgated by the Secretary under section 712, except that no such program may be required to apply to all of the multifamily dwellings and commercial buildings located within such utility's service area if, within 6 months from the date on which the Secretary's rules are promulgated with respect to such program, the State regulatory authority which exercises ratemaking authority over such utility determines that the inclusion of such additional buildings or dwellings would significantly impair such utility's ability—

(A) to fulfill the requirements of section 215, or

(B) to provide utility service to its customers.

(2) provides adequate State procedures for implementing the enforcement of the plan;

(3) provides procedures for insuring that effective coordination exists among various local, State, and Federal agency conserving programs within and affecting such state; and

(4) is adopted after notice and public hearing.

SEC. 723. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND BUILDING HEATING SUPPLIERS.

(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—No plan proposed by a nonregulated utility shall be approved by the secretary unless such plan meets the same requirements as provided under section 722 for regulated utilities. In applying the requirements of section 722 in the case of a plan for a nonregulated utility under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility and the reference to the State regulatory authority shall be treated as a reference to the Governor.

(b) REQUIREMENTS FOR PLANS FOR BUILDING HEATING SUPPLIERS.—No plan proposed for building heating supplies shall be approved by the Secretary unless such plan meets the same requirements as provided under paragraphs (3) and (4) of section 722 and—

(1) meets the requirements of section 732 and contains adequate enforcement procedures with respect to such requirements;

(2) meets such requirements applicable to building heating suppliers as may be contained in the rules promulgated under section 712; and

(3) takes into account the resources of small building heating suppliers.

PART 3—UTILITY PROGRAMS

SEC. 731. UTILITY PROGRAMS.

(a) GENERAL REQUIREMENTS.—Each utility program shall include procedures designed to provide that each public utility—

(1) offers to each eligible customer, no later than 12 months after the approval of the applicable plan and every 24 months thereafter until 1990, an energy audit of the eligible customer's commercial building or multifamily dwelling;

(2) conditions the availability of an energy audit in the case of a multifamily dwelling upon the agreement by the eligible customer to provide to the tenants of the customer's multifamily dwelling the information developed by such audit concerning energy efficient improvements and commercial energy conservation measures applicable to the individual dwelling units in such dwelling;

(3) maintains a report of each audit performed pursuant to this subsection with respect to a commercial building or multifamily dwelling for not less than 10 years, which report shall be available to any subsequent eligible customer of such commercial building or multifamily dwelling; and

(4) shall not be required to conduct an energy audit of a commercial building or multifamily dwelling which has been audited previously pursuant to this title or title III; except that any public utility may contract with one or more persons, including another utility, to carry out directly some or all of the responsibilities required by this subsection.

(b) REQUIREMENTS CONCERNING ACCOUNTING AND PAYMENT OF COSTS.—Each State regulatory authority or nonregulated utility shall, within 180 days after promulgation of rules under section 712(a), or such longer period as the Secretary for good cause may allow, provide—

(1) that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 741) are accounted for on the books and records of the public utility separately from amounts attributable to all other activities of such utility;

(2) that all amounts expended by a utility for providing information concerning the availability of the energy audit offered pursuant to subsection (a)(1) are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service; and

(3) that all other amounts expended by a public utility to carry out the provisions of this title, are recovered in the manner specified by the State regulatory authority which has ratemaking authority over such utility (or in the case of a nonregulated utility in the manner specified by such nonregulated utility); except that, in the case of a multifamily dwelling, the amount which may be recovered directly from an eligible customer for whom the activities described in subsection (a) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less; in determining the amount to be recovered directly from cutomers as provided under this paragraph, the State regulatory authority (in the case of a regulated utility) or the utility (in the case of a nonregulated utility) shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) RATEPAYER.—For purposes of subsection (b), the term "ratepayer" means any person, State agency, or Federal agency who purchases electric energy or natlral gas from a utility for purposes other than for resale.

SEC. 732. BUILDING HEATING SUPPLIER PROGRAM.

(a) REQUIREMENTS.—Except as may be provide by the Secretary, the procedures for each building heating supplier program shall be identical to the procedures required for utilities in section 731(a).

(b) WAIVER.—The Governor may waive, for any building heating supplier, any requirement established pursuant to this section, upon demonstration to the Governor's satisfaction that the resources of such supplier do not enable the supplier to comply with such requirement.

PART 4—FEDERAL IMPLEMENTATION

SEC. 741. FEDERAL STANDBY AUTHORITY.

(a) PROMULGATION OF PLAN BY THE SECRETARY.—If a State does not have a plan approved under section 721 within 270 days after promulgation of rules under section 712(a), or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

(1) promulgate a plan which meets the requirements of section 722; and

(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its eligible customers a utility program prescribed in such order which meets the requirements specified in section 731.

(b) NONREGULATED UTILITIES.—If a nonregulated utility which is not covered by an approved State plan under section 721 does not have a plan approved under such section within 270 days after promulgation of rules under section 712(a) or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines that such nonregulated utility has not adequately im-

plemented an approved plan, the Secretary shall, by order, require such nonregulated utility—

(1) to promulgate a plan which meets the requirements of section 723 and which applies to the commercial buildings and multifamily dwellings which would have been covered had such a plan been so approved or implemented; and

(2) no later than 90 days following the date of issuance of such order, to offer to its customers a utility program prescribed in such plan which meets the requirements specified in section 731.

(c) ENFORCEMENT.—If the Secretary determines that any person has violated any provision of this title, any plan approved or promulgated under this title, or any order issued pursuant thereto, the Secretary may file a petition in the appropriate United States district court to enjoin such person from violating such provision, plan, or order. The provisions of subsections (c) and (d) of section 219 shall apply to any violation of any order or plan promulgated by the Secretary under authority of subsections (a) and (b) of this section.

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